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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Argentina, Azerbaijan, Brazil, Chile, Costa Rica, Ecuador, Egypt, El Salvador, Guatemala, Mexico, Nicaragua, Paraguay, Peru, Philippines: draft resolution

Protection of migrants

The General Assembly,

Recalling all its previous resolutions on the protection of migrants, the most recent of which is resolution 62/156 of 18 December 2007, and recalling also Human Rights Council resolution 9/5 of 24 September 2008,

Reaffirming the Universal Declaration of Human Rights[1] in its sixtieth anniversary year, which proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Reaffirming also that everyone has the right to freedom of movement and residence within the borders of each State, and to leave any country, including his own, and return to his country,

Recalling the International Covenant on Civil and Political Rights[2] and the International Covenant on Economic, Social and Cultural Rights,[2] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[3] the Convention on the Elimination of All Forms of Discrimination against Women,[4] the Convention on the Rights of the Child,[5] the International Convention on the

[1] Resolution 217 A (III).

[2] See resolution 2200 A (XXI), annex.

[3] United Nations, *Treaty Series*, vol. 1465, No. 24841.

[4] Ibid., vol. 1249, No. 20378.

[5] Ibid., vol. 1577, No. 27531.

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Elimination of All Forms of Racial Discrimination,[6] the Vienna Convention on Consular Relations[7] and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,[8]

Recalling also the provisions concerning migrants contained in the outcomes of all major United Nations conferences and summits,

Underlining the importance of the Human Rights Council in promoting respect for the protection of the human rights and fundamental freedoms of all, including migrants,

Recalling advisory opinion OC-16/99 of 1 October 1999 on the Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law and advisory opinion OC-18/03 of 17 September 2003 on the Juridical Condition and Rights of Undocumented Migrants, issued by the Inter-American Court of Human Rights,

Taking note of the Judgment of the International Court of Justice of 31 March 2004 in the case concerning *Avena and Other Mexican Nationals*,[9] and recalling the obligations of States reaffirmed therein and subsequent rulings of the International Court of Justice following that Judgment,

Recalling the High-level Dialogue on International Migration and Development, held in New York on 14 and 15 September 2006 for the purpose of discussing the multidimensional aspects of international migration and development, which recognized the relationship between international migration, development and human rights, and taking note of the second meeting of the Global Forum on Migration and Development, organized and hosted by the Government of the Philippines from 27 to 30 October 2008,

Recalling also its resolution 62/270 on the Global Forum on Migration and Development, in which, inter alia, it recognized that exchanges of information and expertise, consultation and closer cooperation between the Global Forum on Migration and Development and the United Nations could have a positive impact,

Noting with appreciation in this regard the conclusions and recommendations of the international meeting on the protection of the rights of children in the context of international migration, held on 30 September and 1 October 2008 in Mexico City, co-organized by the Office of the United Nations High Commissioner for Human Rights, which will be presented to the Global Forum on Migration and Development as a contribution to the discussion on the matter,

Emphasizing the global character of the migratory phenomenon, the importance of international, regional and bilateral cooperation and dialogue in this regard, as appropriate, and the need to protect the human rights of migrants, particularly at a time in which migration flows have increased in the globalized economy and take place in a context of new security concerns,

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[6] Ibid., vol. 660, No. 9464.

[7] Ibid., vol. 596, No. 8638.

[8] Ibid., vol. 2220, No. 39481.

[9] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 4* (A/59/4), chap. V, sect. A.23; see also *Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, I.C.J. Reports 2004*, p. 12.

Bearing in mind that policies and initiatives on the issue of migration, including those that refer to the orderly management of migration, should promote holistic approaches that take into account the causes and consequences of the phenomenon, as well as the full respect for the human rights and fundamental freedoms of migrants,

Noting that many migrant women are employed in the informal economy and in less skilled work compared with that of men, which puts those women at greater risk of abuse and exploitation,

Concerned about the large and growing number of migrants, especially women and children, who place themselves in a vulnerable situation by attempting to cross international borders without the required travel documents, and underlining the obligation of States to respect the human rights of those migrants,

Expressing deep concern at the excessive detention periods to which undocumented migrants might be subject,

Underlining the importance for States, in cooperation with non-governmental organizations, to undertake information campaigns aimed at clarifying opportunities, limitations and rights in the event of migration, so as to enable everyone to make informed decisions and to prevent them from utilizing dangerous means to cross international borders,

1. *Calls upon* States to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children, and to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability;

2. *Also calls upon* States to ensure that their laws and policies, including in the areas of counter-terrorism and combating transnational organized crime such as trafficking in persons and smuggling of migrants, fully respect the human rights of migrants;

3. *Calls upon* States that have not done so to consider signing and ratifying or acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[9] as a matter of priority, and requests the Secretary-General to continue his efforts to raise awareness of and promote the Convention;

4. *Urges* States parties to the United Nations Convention against Transnational Organized Crime[10] and supplementing protocols thereto, namely, the Protocol against the Smuggling of Migrants by Land, Sea and Air[11] and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,[12] to implement them fully, and calls upon States that have not done so to consider ratifying or acceding to them as a matter of priority;

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[10] United Nations, *Treaty Series*, vol. 2225, No. 39574.
[11] Ibid., vol. 2241, No. 39574.
[12] Ibid., vol. 2237, No. 39574.

5. *Takes note* of the report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on its seventh and eighth sessions;[13]

6. *Requests* all States, international organizations and relevant stakeholders to take into account in their policies and initiatives on migration issues the global character of the migratory phenomenon and to give due consideration to international, regional and bilateral cooperation in this field, including by undertaking dialogues on migration that include countries of origin, destination and transit, as well as civil society, including migrants, with a view to addressing, in a comprehensive manner, inter alia, its causes and consequences and the challenge of undocumented or irregular migration, granting priority to the protection of the human rights of migrants;

7. *Expresses concern* about legislation and measures adopted by some States that may restrict the human rights and fundamental freedoms of migrants, and reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants;

8. *Deeply regrets and expresses concern about* the adoption of regulations that criminalize undocumented migration;

9. *Expresses* the view that, as a rule, undocumented migrants should not be subject to detention, and calls on Member States to avoid excessive periods of detention and respect unequivocally the inherent dignity of migrants;

10. *Urges* all States to refrain from taking any type of measure that stigmatizes any group of individuals, regardless of their migration status;

11. *Requests* States to adopt concrete measures to prevent the violation of the human rights of migrants while in transit, including in ports and airports and at borders and migration checkpoints, to train public officials who work in those facilities and in border areas to treat migrants respectfully and in accordance with the law, and to prosecute, in conformity with applicable law, any act of violation of the human rights of migrants, inter alia, arbitrary detention, torture and violations of the right to life, including extrajudicial executions, during their transit from their country of origin to the country of destination and vice versa, including their transit through national borders;

12. *Recalls* that the Universal Declaration of Human Rights recognizes that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him or her;

13. *Commends* States that have successfully implemented alternative measures to detention for undocumented migrants as a best practice that deserves serious consideration by all States;

14. *Urges* States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations and take into account, in conformity with their international obligations and commitments, the principle of the best interest of the child and family reunification;

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[13] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 48* (A/63/48).

15. *Underlines* the right of migrants to return to their country of citizenship;

16. *Reaffirms emphatically* the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations,[7] in particular with regard to the right of all foreign nationals, regardless of their immigration status, to communicate with a consular official of the sending State in case of arrest, imprisonment, custody or detention, and the obligation of the receiving State to inform the foreign national without delay of his or her rights under the Convention;

17. *Strongly condemns* the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them, including on the basis of religion or belief, and urges States to apply and, where applicable, reinforce the existing laws when xenophobic or intolerant acts, manifestations or expressions against migrants occur, in order to eradicate impunity for those who commit xenophobic and racist acts;

18. *Requests* all States, in conformity with national legislation and applicable international legal instruments to which they are party, to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers' labour relations and working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association;

19. *Encourages* all States to remove obstacles that may prevent the safe, unrestricted and expeditious transfer of remittances of migrants to their country of origin or to any other countries, in conformity with applicable legislation, and to consider, as appropriate, measures to solve other problems that may impede such transfers;

20. *Welcomes* immigration programmes, adopted by some countries, that allow migrants to integrate fully into the host countries, facilitate family reunification and promote a harmonious, tolerant and respectful environment, and encourages States to consider the possibility of adopting these types of programmes;

21. *Requests* Member States, the United Nations system, international organizations, civil society and all relevant stakeholders, especially the United Nations High Commissioner for Human Rights and the Special Rapporteur on the human rights of migrants, to ensure that the perspective of the human rights of migrants is included among the priority issues in the ongoing discussions on international migration and development within the United Nations system, bearing in mind the discussions of the High-level Dialogue on International Migration and Development held pursuant to General Assembly resolution 58/208 of 23 December 2003;

22. *Invites* the Chairperson of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to address the General Assembly at its future sessions under the agenda item "Promotion and protection of human rights";

23. *Invites* the Special Rapporteur on the human rights of migrants to present his report to the General Assembly at its future sessions under the agenda item "Promotion and protection of human rights";

24. *Invites* Member States to strengthen their efforts to develop data and statistics as well as to collect information on the contribution of migrants to all spheres of society and to provide such data to the Secretary-General;

25. *Welcomes* the inclusion of the item on the human rights of migrants in the agenda of the Global Forum on Migration and Development and encourages organizers of the Global Forum to continue to include the human rights perspective;

26. *Requests* the Secretary-General to provide the resources necessary, from within existing resources of the United Nations, for the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to meet for two separate sessions in 2009, the first session to be of two consecutive weeks' duration and the second session to be of one week's duration, for the purpose of meeting the demands of the workload arising from the increasing number of reports of States parties that have been submitted to the Committee, and invites the Committee to consider ways of further improving the effectiveness of its working sessions;

27. *Also requests* the Secretary-General to report on the implementation of the present resolution at its sixty-third fourth session and to include in that report an analysis of the ways and means to promote the human rights of migrants, taking into account the views of the Special Rapporteur on the human rights of migrants, and decides to examine the question further under the item entitled "Promotion and protection of human rights".